

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID EVERETTE,

Petitioner,

-v-

MARK ROYCE,

Respondent.

18 Civ. 3674 (PAE) (SDA)

ORDER

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PAUL A. ENGELMAYER, District Judge:

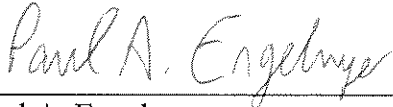
On October 13, 2021, the Court issued an Opinion and Order denying Mr. Everett’s petition to vacate his sentence pursuant to 28 U.S.C. § 2254. *See* Dkt. 40. On November 2, Mr. Everett filed a notice of appeal. Dkt.41. Recently, the Court’s staff was contacted by the Second Circuit’s clerk’s office inquiring as to whether the Court intended to issue a certificate of appealability for Mr. Everett’s claims. This Court’s failure to rule on the certificate of appealability at the time of its October 13 decision was an oversight.

Pursuant to 28 U.S.C. § 2253, an appeal may not be taken to the Court of Appeals from a final order in a proceeding under section 2254 unless a certificate of appealability is issued. A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” For the reasons set forth in this Court’s Opinion and Order denying Mr. Everett’s petition, Dkt. 40, Mr. Everett has not made such a “substantial showing.” Therefore, a certificate of appealability shall not issue.

The Clerk of Court is directed to mail a copy of this order to Mr. Everett at his last known address, along with the attached instructions, taken from the Second Circuit’s website,

which address the steps Mr. Everette may take to seek a certificate of appealability from the Second Circuit.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: May 5, 2022
New York, New York